



September 28, 2019

Secretary of State Michael Pompeo
U.S. Department of State
2201 C Street, NW
Washington, DC 20520

John Dinkelman
Acting Assistant Secretary for Administration
Chief FOIA Officer
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Timothy J. Kootz, Agency Records Officer
U.S. Department of State
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Dear Secretary Pompeo, Acting Assistant Secretary Dinkelman, & Records Officer Kootz:

According to recent reports, U.S. Special Representative for Ukraine Negotiations Kurt Volker has just resigned.¹ President Trump's personal attorney Rudolph Giuliani has detailed his extensive text message communications with Ambassador Volker regarding efforts to pressure the Ukrainian government to investigate presidential candidate, former Vice President Joe Biden and his son Hunter Biden.² These efforts have raised immense public concerns that President Trump is using the power of the U.S. Government to pressure a foreign government to investigate one of President Trump's political opponents in order to confer an electoral advantage on the president. American Oversight has submitted multiple Freedom of Information Act (FOIA) requests for relevant communications of Ambassador Volker's,³ and Ambassador Volker's text message communications with Mr. Giuliani are plainly agency records responsive to American Oversight's requests. These FOIA requests seek records of immense public importance in light of the impeachment inquiry that has been initiated to determine if President Trump's actions, including actions undertaken at his direction by Mr. Giuliani, warrant his impeachment.

Ambassador Volker's decision to communicate with the personal attorney of the president regarding official matters—including setting up a meeting with a foreign government official—through strikingly

¹ Peter Baker, *Kurt Volker, Trump's Envoy for Ukraine, Resigns*, N.Y. TIMES, Sept. 27, 2019, <https://www.nytimes.com/2019/09/27/us/politics/volker-ukraine-resigns.html>.

² Shane Croucher, *Rudy Giuliani Reveals State Department Text Messages About His Ukraine Dealings: 'They're All Over Me . . . Asking Me to Do It.'*, NEWSWEEK (Sept. 27, 2019, 6:15 AM), <https://www.newsweek.com/giuliani-state-department-ukraine-text-messages-trump-biden-whistleblower-1461741>.

³ See, e.g., AMERICAN OVERSIGHT, FOIA to State Seeking Communications Regarding Ukraine Envoy Kurt Volker's Contacts with Rudy Giuliani, Aug. 23, 2019, <https://www.americanoversight.org/document/foia-to-state-seeking-communications-regarding-ukraine-envoy-kurt-volkers-contacts-with-rudy-giuliani>.



irregular text messages raises serious concerns about whether these records have been preserved in the manner required by the Federal Records Act. 44 U.S.C. § 3106.⁴ It is unclear whether Ambassador Volker used an official device to communicate with Mr. Giuliani. Even if Mr. Volker did use an official device for these text message communications, Mr. Giuliani's suggestion that he feels the need to preserve and share his text messages with Ambassador Volker to protect himself from charges that he acted without coordinating with State Department officials heightens concerns that Ambassador Volker has not properly preserved, or does not intend to preserve, these immensely important federal records.⁵

As stated in its FOIA request for Mr. Volker's communications with Mr. Giuliani,⁶ American Oversight intends to pursue all legal avenues to enforce its rights to access the records it has requested, including through litigation. The State Department remains on notice that litigation is reasonably foreseeable and should take prompt action to place a preservation hold on relevant records. In light of the special risks presented by Ambassador Volker's imminent departure and the possibility that he used unofficial electronic messaging systems in violation of the Federal Records Act, 44 U.S.C. § 2911(a), the State Department should take immediate action to preserve and recover any and all federal records from Ambassador Volker's electronic devices, including his text messages with Mr. Giuliani, before his departure.

The Federal Records Act requires you to notify the Archivist of "any actual, impending, or threatened" unlawful removal, alteration, or destruction of federal records, and to initiate an action through the Attorney General to recover those records you have reason to believe were unlawfully removed.

44 U.S.C. § 3106(a). American Oversight urges you to take immediate action to preserve or recover all federal records in the custody of Ambassador Volker and, if there is any reason to believe that records have been unlawfully removed, to undertake an enforcement action through the Attorney General to ensure that all of the vitally important records of national significance within Ambassador Volker's possession are properly preserved so they may be accessed by the public and Congressional authorities.

Please promptly alert American Oversight when you have taken action to preserve or recover federal records in Ambassador Volker's possession. You may contact Daniel McGrath at 202.897.4213 or foia@americanoversight.org.

Sincerely,



Melanie Sloan
Senior Advisor
American Oversight

⁴ See also 44 U.S.C. § 3101 (requiring preservation of records documenting the "organization, functions, policies, decisions, procedures, and essential transactions of the agency"); 44 U.S.C. § 3301 (defining records as "all information, regardless of form or characteristics, made or received by a Federal agency under Federal law or in connection with the transaction of public business and preservation by that agency . . ."); NATIONAL ARCHIVES AND RECORDS ADMINISTRATION, Bulletin 2015-02, July 29, 2019, <https://www.archives.gov/records-mgmt/bulletins/2015/2015-02.html> (stating that text messages and similar records are federal records).

⁵ Croucher, *supra* note 2.

⁶ *Supra* note 3 at 5.

Cc:

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